

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/1/2011 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-11 and 20-21 rejected under 35 U.S.C. 103(a) as being unpatentable over John et al (US 2001/0049480) in view of Picton (examiner provided non patent literature).

Since the priority documents do not disclose the claimed subject matter, these claims are not being afforded the priority dates of the provisional applications. Therefore the priority date of these claims is the filing date of the application.

Regarding claims 1-11 and 20-21; the methods as claimed are disclosed in paragraphs [0136]-[0137], [0143], [0150], [0154]-[0157], [0193], [0301] and [0302]. A rapid hearing test is disclosed in paragraph [0301]. However, John does not disclose use of the test as a screening test wherein the test results indicate a pass or fail and that a fail test indicated a diagnostic threshold hearing test is merited.

Picton teaches using steady state responses to screen for hearing loss using modulated noise as a stimulus in order to recognize a response more quickly (Screening section).

Regarding claims 1-11 and 20-21; it would have been obvious to use John's hearing test and steady state response monitoring in a screening test as taught by Picton in order to assess a patient hearing more quickly. Furthermore, it would have been obvious to a practitioner of ordinary skill in the art at the time of the invention to recommend a more comprehensive diagnostic threshold test upon discovering there is a problem via the screening test (as is the well known purpose of a screening test, discovering if a problem is present in order to decide if further testing is required).

5. Claims 1-3, 7, 9, 20-21 and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over MASTER (previously included NPL by John et al) in view of Picton (examiner provided NPL).

MASTER discloses the use of the MASTER system to provide a modulated stimulus, record responses, analyze acquired signals and evaluate the result data to determine the presence of an auditory response as disclosed in the claims (see whole document). However, MASTER does not disclose use of the test as a screening test wherein the test results indicate a pass or fail and that a fail test indicated a diagnostic threshold hearing test is merited.

Picton teaches using steady state responses to screen for hearing loss using modulated noise as a stimulus in order to recognize a response more quickly (Screening section).

Regarding claims 1-3, 7, 9, 20-24 and 40-43; it would have been obvious to use the MASTER hearing test and steady state response monitoring in a screening test as taught by Picton in order to assess a patient hearing more quickly. Furthermore, it would have been obvious to a practitioner of ordinary skill in the art at the time of the invention to recommend a more comprehensive diagnostic threshold test upon discovering there is a problem via the screening test (as is the well known purpose of a screening test: discovering if a problem is present in order to decide if further testing is required).

6. Claims 1-3, 7, 9, 20-21 and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over MASTER: Stimulus and Recording Parameters (previously included NPL; herein referred to as MASTER: Stimulus) in view of Picton (examiner provided NPL).

MASTER: Stimulus discloses the use of MASTER to provide a modulated stimulus, record responses, analyze the acquired signals and evaluate the result data to determine the presence of an auditory response (see whole document).

Picton teaches using steady state responses to screen for hearing loss using modulated noise as a stimulus in order to recognize a response more quickly (Screening section).

Regarding claims 1-3, 7, 9, 20-24 and 40-43; it would have been obvious to use the MASTER hearing test and steady state response monitoring in a screening test as taught by Picton in order to assess a patient hearing more quickly. Furthermore, it would have been obvious to a practitioner of ordinary skill in the art at the time of the invention to recommend a more comprehensive diagnostic threshold test upon discovering there is a problem via the screening test (as is the well known purpose of a screening test: discovering if a problem is present in order to decide if further testing is required).

Response to Amendment

7. Applicant's arguments with respect to claims 1-11, 20-24 and 40-43 have been considered but are moot in view of the new ground(s) of rejection.

Specifically the applicant amended the claims to further distinguish the current art from screening test and that a failed screening test would result in performing a diagnostic threshold test (thus distinguishing a screening test from a diagnostic threshold test which the applicant believe is disclosed in the previously cited prior art). Accordingly the examiner has provided the Picton reference which states that it was

known at the time of the invention to modify use of the MASTER system disclosed in the previously cited prior art for use as a screening test through the use of modulated noise and recording of the steady state response. Furthermore, as stated above, the examiner believe that by stating the MASTER system could be modified for use in a screening test it would have been obvious to one of ordinary skill in the art at the time of the invention to follow up a failed screening test with a more comprehensive test such as the MASTER diagnostic threshold tests disclosed in the previously cited prior art. It would have been obvious as it is well known in the art of medical diagnostics that screening tests are used to determine the presence of a problem or disease before more comprehensive tests are performed in order to save time and money.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ADAM J. EISEMAN whose telephone number is (571)270-3818. The examiner can normally be reached on Monday-Friday 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AE
4/8/2011
/A. J. E./
Examiner, Art Unit 3736

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736